

AMENDED IN ASSEMBLY MAY 20, 2010

AMENDED IN ASSEMBLY APRIL 27, 2010

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2490

Introduced by Assembly Member Jones

February 19, 2010

An act to add Section 11658.5 to the Insurance Code, relating to workers' compensation insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2490, as amended, Jones. Workers' compensation insurance: dispute resolution: arbitration clauses.

Existing law requires that a workers' compensation insurance policy or endorsement not be issued by an insurer unless the insurer files a copy of the form or endorsement with the rating organization and 30 days have expired from the date the form or endorsement is received by the commissioner from the rating organization without notice from the commissioner, unless the commissioner gives written approval of the form or the endorsement prior to that time.

This bill would require any agreement, other than a settlement agreement resolving a particular dispute, between an employer and a workers' compensation insurer concerning resolution of disputes, including, but not limited to, an arbitration clause arising out of a workers' compensation policy or endorsement be part of the form or endorsement filed with the rating organization and ~~approved~~ *subject to approval* by the commissioner and contain provisions to resolve disputes that arise in this state in the California courts and under California law.

Failure to observe those requirements would render the dispute resolution agreement void and unenforceable.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) All California employers subject to the Workers'
4 Compensation Law are required by law to obtain insurance for
5 their employees.

6 (b) Workers' compensation policies and endorsements are highly
7 regulated and designed primarily to protect the worker and ensure
8 prompt payment of claims.

9 (c) The Legislature has authorized the Insurance Commissioner
10 (commissioner) to oversee the form and substance of all workers'
11 compensation insurance policies and endorsements, including
12 everything from the scope of required coverage provided to
13 employees, to the amount employers pay insurers for premiums.

14 (d) Insurance companies providing workers' compensation
15 policies and endorsements are required by law to file the policies
16 and endorsements with the rating organization for transfer to the
17 commissioner.

18 (e) Disputes between employers and insurance companies
19 regarding workers' compensation plans can arise, and resolution
20 of these disputes through litigation can be expensive, uncertain,
21 and time consuming.

22 (f) In an effort to save time, costs, and the uncertainty of
23 litigation, national workers' compensation carriers often place
24 mandatory arbitration clauses into policies and, over time, these
25 arbitration clauses have become complex and expensive, and have
26 diminished the rights of the parties in the arbitration proceedings.

27 (g) Despite the requirement that the workers' compensation
28 carrier file policies and endorsements with the rating organization
29 and wait a prescribed period, some workers' compensation carriers
30 issue separate or side agreements, sometimes called Insurance
31 Program Agreements or IPAs, that are not provided to the employer
32 until after the policy or endorsement is accepted, that require
33 arbitration of any disputes between the employer and the carrier

1 concerning the workers' compensation policy or endorsement, and
2 that have not been filed with the rating organization or
3 commissioner.

4 (h) These unfiled separate or side agreements often choose a
5 foreign jurisdiction's law to interpret the plan and resolve disputes,
6 and choose a state other than California as the location or venue
7 to conduct arbitrations. This subjects Californians to another state's
8 laws and forces them to travel outside this state to conduct dispute
9 resolution proceedings, resulting in significant cost burdens.

10 (i) California employers have successfully challenged some of
11 these side agreements containing arbitration clauses; however, it
12 should not be necessary to burden the California courts with these
13 cases.

14 (j) California has a compelling state interest in ensuring that
15 workers' compensation policies and endorsements are enforced
16 under California law and not subject to interpretation by other
17 jurisdictions, and that any dispute resolution proceedings are
18 conducted within its borders.

19 SEC. 2. Section 11658.5 is added to the Insurance Code, to
20 read:

21 11658.5. (a) Any agreement, other than a settlement agreement
22 resolving a particular dispute, between an employer and a workers'
23 compensation insurer concerning resolution of disputes, including,
24 but not limited to, an arbitration clause arising out of a workers'
25 compensation policy or endorsement shall conform to all of the
26 following:

27 (1) It shall be part of the form or endorsement filed with the
28 rating organization and ~~approved~~ *subject to approval* by the
29 commissioner pursuant to Section 11658.

30 (2) It shall contain a choice of law provision that identifies
31 California law as the law to be used to resolve any dispute that
32 arises in California.

33 (3) It shall contain a forum selection provision that identifies
34 California as the proper venue for any proceeding regarding a
35 dispute that arises in California.

36 (b) Failure to observe the requirements of this section shall
37 render the dispute resolution agreement void and unenforceable.

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